



6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0029-201163; FRL-9613-1]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina and South Carolina; Charlotte; Determination of Attainment by Applicable Attainment Date for the 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine pursuant to the Clean Air Act (CAA), that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, ozone nonattainment area (hereafter referred to as “the bi-state Charlotte Area” or “the Area”) has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS) *by its applicable attainment date of June 15, 2011*. The determination of attainment was made by EPA on November 15, 2011, based on quality-assured and certified monitoring data for the 2008 – 2010 monitoring period. EPA is now proposing to find that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS *by its applicable attainment date*. EPA is proposing this action because it is consistent with the CAA and its implementing regulations.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2011-0029, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: benjamin.lynorae@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: EPA-R04-OAR-2011-0029, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2011-0029." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means

EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding this attainment determination, contact Mr. Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9043; e-mail address: lakeman.sean@epa.gov. For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Telephone number: (404) 562-9029; e-mail address: spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. What Action is EPA Taking?**
 - II. What is the Background for This Action?**
 - III. What is the Air Quality in the Bi-state Charlotte Area for the 1997 8-Hour Ozone NAAQS for the 2008-2010 Monitoring Period?**
 - IV. What is the Proposed Action and What is the Effect of This Action?**
 - V. Statutory and Executive Order Reviews**
- I. What Action is EPA Taking?**

Based on EPA's review of the quality-assured and certified monitoring data for 2008 – 2010, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA proposes to determine that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS *by the applicable attainment date of June 15, 2011.*¹ The bi-state Charlotte Area is

¹ Effective June 15, 2004, EPA designated the bi-state Charlotte Area as a moderate area under the 1997 8-hour

comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; a portion of York County in South Carolina; and the Catawba Indian Nation Reservation. On November 15, 2011, EPA published a final rulemaking making a determination of attainment to suspend the requirements for the bi-state Charlotte Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 8-hour ozone NAAQS so long as the Area continues to attain the 1997 8-hour ozone NAAQS. *See* 76 FR 70656. Today's proposed action merely makes a determination that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS by its applicable attainment date. This action is not a re-proposal of the attainment determination to suspend the requirements for the bi-state Charlotte Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard. More information regarding the 1997 8-hour ozone NAAQS and the Area's attainment of that NAAQS is available at 76 FR 70656 (November 15, 2011).

II. What is the Background for This Action?

As a nonattainment area for the 1997 8-hour ozone NAAQS, the bi-state Charlotte Area had an applicable attainment date of June 15, 2011 (based on 2008 – 2010 monitoring data). Pursuant to section 179(c) of the CAA, EPA is required to make a determination on whether the

ozone NAAQS. Moderate areas for the 1997 8-hour ozone NAAQS had an applicable attainment date of June 15, 2010, unless the Area qualified for an extension. On May 31, 2011, EPA took final action to extend the applicable attainment date for the bi-state Charlotte Area to June 15, 2011. *See* 76 FR 31245 for more information.

Area attained the standard by its applicable attainment date. Specifically, section 179(c)(1) of the CAA reads as follows: “As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area’s air quality as of the attainment date, whether the area attained the standard by that date.”

III. What is the Air Quality in the Bi-state Charlotte Area for the 1997 8-Hour Ozone NAAQS for the 2008-2010 Monitoring Period?

Pursuant to EPA regulation 40 CFR § 50.10, the 1997 8-hour ozone NAAQS is met when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations, as determined in accordance with 40 CFR part 50, Appendix I, is less than or equal to 0.08 parts per million (ppm) (*i.e.*, 0.084 ppm when rounding is considered) in the subject area.

EPA reviewed the ambient air monitoring data for the bi-state Charlotte Area in accordance with the provisions of 40 CFR part 50, Appendix I. All data considered have been quality-assured, certified, and recorded in EPA’s Air Quality System database. This review addresses air quality data collected in the 3-year period from 2008 – 2010, which is the period that EPA must consider for areas with an applicable attainment date of June 15, 2011.

| Table 1. Design Values for Counties in the bi-state Charlotte, North and South Carolina Nonattainment Area for the 1997 8-hour Ozone NAAQS | | | | | |
|---|---|-----------------------|-----------------------|-----------------------|---|
| Location | AQS site ID | 2008 (ppm) | 2009 (ppm) | 2010 (ppm) | 2008-2010 Design Value (ppm) |
| Lincoln County (NC) | 1487 Riverview Rd. (37-109-0004) | 0.079 | 0.065 | 0.072 | 0.072 |
| Mecklenburg County (NC) | 1130 Eastway Dr. (37-119-0041) | 0.085 | 0.069 | 0.082 | 0.078 |
| Mecklenburg County (NC) | 400 Westinghouse Blvd. (37-119-1005) | 0.073 | 0.068 | 0.078 | 0.073 |
| Mecklenburg County (NC) | 29 N @ Mecklenburg Cab Co. (37-119-1009) | 0.093 | 0.071 | 0.082 | 0.082 |
| Rowan County (NC) | 301 West St & Gold Hill Ave. (37-159-0021) | 0.084 | 0.071 | 0.077 | 0.077 |
| Rowan County (NC) | 925 N Enochville Ave. (37-159-0022) | 0.082 | 0.073 | 0.078 | 0.077 |
| Union County (NC) | 701 Charles St. (37-179-0003) | 0.08 | 0.067 | 0.071 | 0.072 |

As shown above in Table 1, during the 2008 – 2010 design period, the bi-state Charlotte Area met the 1997 8-hour ozone NAAQS. The official annual design value for the bi-state Charlotte Area for the 2008– 2010 period is 0.082 ppm. More detailed information on the monitoring data for the bi-state Charlotte Area during the 2008 – 2010 design period is provided in EPA’s November 15, 2011, final rulemaking to approve the clean data determination for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS. *See* 76 FR 70656.

IV. What is the Proposed Action and What is the Effect of This Action?

This action is a proposed determination that the bi-state Charlotte Area has attained the

1997 8-hour ozone NAAQS *by its applicable attainment date of June 15, 2011*, consistent with the CAA section 179(c)(1). Finalizing this proposed action would not constitute a redesignation of the bi-state Charlotte Area to attainment of 1997 8-hour ozone NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action would not involve approving a maintenance plan for the bi-state Charlotte Area as required under section 175A of the CAA, nor would it constitute a determination that the bi-state Charlotte Area has met all other requirements for redesignation. Even if EPA finalizes today's proposed action, the designation status of the bi-state Charlotte Area would remain nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Consistent with Executive Order 13175 (65 FR 67,249, November 9, 2000) and EPA’s Policy on Consultation and Coordination with Indian Tribes, EPA has consulted with Catawba Indian Nation regarding today’s proposed action.² In a letter dated October 13, 2011, EPA extended the Catawba Indian Nation an opportunity to consult with EPA regarding this and other actions

²The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Generally, SIPs do not apply in Indian country throughout the United States. However, for purposes of the Catawba Indian Nation Reservation in Rock Hill, the South Carolina SIP does apply within the Reservation pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (providing that “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.”)

related to the Charlotte Area. Consultation with the Catawba Indian Nation began on October 14, 2011, and ended on October 31, 2011. The views and concerns raised by the Tribe during consultation have been taken into account in this direct final rule. EPA notes today's action will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 19, 2011

Gwendolyn Keyes Fleming,
Regional Administrator,
Region 4.

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